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Supreme Court of the United States.

OCTOBER TERM, 1943.

THOMAS J. CASEY, TRUSTEE,
Petitioner,

v.

JOHN HANCOCK MUTUAL LIFE INSURANCE
COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND
BRIEF IN SUPPORT THEREOF.

THOMAS J. CASEY,
Attorney pro se.



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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Thomas J. Casey, Trustee in Reorganization of Carlton Hotel, Inc., of Boston, Massachusetts, respectfully shows the following:

Jurisdiction.

The jurisdiction of the Supreme Court of the United States is invoked under the provisions of the Bankruptcy Act, U.S.C. 1940 ed., Title II, Sec. 47C, and under Section 240 of the Judicial Code as amended, U.S.C. 1940 ed., Title 48, Sec. 347.

Opinions Below.

The District Court of the United States for the District of Massachusetts on October 7, 1943, entered an order denying the motion of the respondent that the reorganization proceedings be dismissed or that the debtor be adjudged a bankrupt (R. 8).

The Circuit Court of Appeals for the First Circuit on the 31st day of January, 1944, vacated said order and remanded the case to the District Court for further proceedings (R. 29). The opinion of the Circuit Court of Appeals (R. 23-28) is reported in 141 Fed. (2d) 104.

On the 7th day of March, 1944, the Circuit Court of Appeals for the First Circuit denied the petition of the petitioner for a rehearing of the respondent's appeal (R. 29).

Statutes Involved.

The statute involved is Chapter X of the Bankruptcy Act of 1898 as amended (U.S.C. 1940 ed., c. 10).

Summary Statement of Matter Involved.

For the factual background see opinions in 134 Fed. (2d) 162 (1943), and 139 Fed. (2d) 207 (1943), from which it appears that on the 5th day of August, 1942, Carlton Hotel, Inc., a corporation, which owned and operated a hotel property in Boston known as Hotel Buckminster, filed a petition for reorganization pursuant to Section 128 of Chapter X of the Bankruptcy Act as amended, setting forth, among other things, that there were mortgages upon its property held by the respondent "the terms of which are burdensome and in need of adjustment."

Said petition was approved by the Court on August 18, 1942, and the petitioner herein was duly appointed trustee.

On August 17, 1942, the United States of America took by eminent domain the use and occupation of the Hotel Buckminster for a term of years and paid into the registry of the District Court for the District of Massachusetts the sum of \$34,945 as condemnation moneys for the use and occupation of said premises up to the 30th day of June, 1943, and thereafter on or about the 1st day of July, 1943, the further sum of \$40,000 as condemnation moneys for the use and occupation of said hotel until the 30th day of June, 1944.

Under the terms of the mortgage given by the debtor to the respondent the sum of approximately \$3100 is payable monthly as follows: \$1000 on account of principal, \$1000 on account of taxes, and the balance on account of interest. There is no acceleration clause in the mortgage. No payments have been made to the respondent of sums becoming due monthly since August 1, 1942. The petitioner has at all times been ready to pay said sums out of the condemnation moneys, but the respondent has contested the right of the petitioner to apply these moneys against these arrears and has demanded all of the condemnation moneys in lieu of its security.

The assets of the debtor exceed its liabilities, both secured and unsecured, and there is cash available to pay the respondent all payments due upon its mortgage to date and to pay the claims of the unsecured creditors in full.

The debtor's plan of reorganization was filed on April 12, 1943 (R. 4). It contains no provision for the adjustment of the respondent's mortgage. It contemplates the immediate payment in full of all priority debts and all arrears on secured debts. General unsecured creditors are to be paid in full in twenty monthly instalments. The plan recites that no provision is made for the stockholders of the

debtor, for the reason that all creditors of all classes who have proved their claims according to the orders of the Court and upon the approval therewith and in such manner as approved by the Court will be paid one hundred cents on the dollar, so that upon the completion of the payments to the creditors the property, after deduction of costs and expenses, will be returned to the debtor corporation.

On June 29, 1943, the respondent moved in the alternative that the reorganization proceedings be dismissed or that the debtor be adjudged bankrupt for the reason, among others, that "the document filed April 12, 1943 entitled 'Debtor's Plan of Reorganization' providing for an extension of time for payment of the unsecured obligations of the debtor is in truth and fact an arrangement under the provisions of Chapter 11 of said Title 11 and not a plan of reorganization within the terms and provisions of said Chapter 10 and that the relief provided for under said Chapters 10 and 11 are mutually exclusive and that said document was not filed in good faith but was filed for the purpose and with the intent of hindering and delaying liquidation of the debtor's estate in appropriate proceedings" (R. 8). On October 7, 1943, the District Court entered an order denying said motion of the respondent (R. 8).

Specifications of Error.

The Circuit Court of Appeals erred—

(1) In vacating the order of the District Court of the United States for the District of Massachusetts of October 7, 1943.

(2) In ruling that the reorganization of the debtor under Chapter X is either unnecessary or impossible.

(3) In ruling that the plan of reorganization as drafted has not been and could not be approved by the judge as an acceptable plan under Chapter X.

(4) In ruling that the proceedings under Chapter X should be terminated.

(5) In ruling that the plan is not a Chapter X plan at all because all it proposes is to effect a composition with reference to the unsecured debts—in other words, for an arrangement within the purview of Chapter XI.

Questions Presented.

The questions here to be presented are:

(1) Does the fact that, subsequently to the approval of the debtor's petition for reorganization, in which all the jurisdictional facts are alleged, the trustee acquires from the conduct of the debtor's business funds sufficient to liquidate in full the claims of the secured creditors so that it then becomes unnecessary to adjust the terms of the respondent's mortgage divest the debtor petitioner of the right to proceed under Chapter X?

(2) Is the plan of reorganization no more or less than a composition with general creditors which might have been presented under Chapter XI of the Bankruptcy Act?

(3) Assuming that the plan of reorganization is no more or less than a composition with general creditors which might have been presented under Chapter XI of the Bankruptcy Act, is that fact a reason why the Court must disapprove it?

Reasons for Granting the Writ.

It has been the practice of the District Courts throughout the United States to approve plans for reorganization

of corporations having secured creditors under Chapter X of the Bankruptcy Act even where the plan makes no provision for the adjustment of the terms of the security but provides solely for composition, payment or extensions of the unsecured claims. The decision of the Circuit Court of Appeals in this case invalidates this almost universal rule and requires the determination of the Supreme Court of the United States.

Prayer for Writ.

Wherefore your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the First Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals for the First Circuit had in the case numbered and entitled on its docket, No. 3955, "John Hancock Mutual Life Insurance Company, Appellant, v. Thomas J. Casey, Trustee, Appellee," to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals for the First Circuit be reversed by the Court, and for such further relief as to this Court may seem proper.

THOMAS J. CASEY,

Pro Se.

